



**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
MAY 4, 5, and 6, 2009**

FIRST AMENDED

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on May 4, 5, and 6, 2009.

MONDAY, MAY 4, 2009—1:30 P.M.

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|-----|---------|---|
| (1) | S157820 | People v. Traylor (Dale) |
| (2) | S064415 | People v. Bramit (Michael Lamar) [Automatic Appeal] |
| (3) | S042323 | People v. Burney (Shaun) [Automatic Appeal] |

TUESDAY, MAY 5, 2009—9:00 A.M.

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| (4) | S156961 | San Leandro Teachers Assn. et al. v. Governing Board of the San Leandro School District et al. |
| (5) | S164884 | Azure Limited v. I-Flow Corp. (<i>Kennard, J., not participating; Perren, J., assigned justice pro tempore</i>) |
| (6) | S157565 | People v. McNeal (Timmie Lance) |

1:30 P.M.

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| (7) | S141480 | In re Martinez (Omar Fuentes) on Habeas Corpus |
| (8) | S055501 | People v. Butler (Raymond) [Automatic Appeal] |
| (9) | S027264 | People v. Friend (Jack Wayne) [Automatic Appeal] |

WEDNESDAY, MAY 6, 2009—9:00 A.M.

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| (10) | S162818 | Munson v. Del Taco, Inc. |
| (11) | S152695 | People v. Anderson (Barry) |
| (12) | S152273 | Porter v. Superior Court of Monterey County (People, Real Party in Interest) |

1:30 P.M.

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|------|---------|---|
| (13) | S158076 | People v. Dieck (Roland) |
| (14) | S069959 | People v. Lewis (Michael) [Automatic Appeal] |
| (15) | S064337 | People v. Rogers (Ramon Jay) [Automatic Appeal] |

GEORGE

Chief Justice

If exhibits are to be transmitted to this court, counsel must apply to the court for permission. (See Cal. Rules of Court, rule 8.224(c).)

**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR
SAN FRANCISCO SESSION
MAY 4, 5, and 6, 2009**

FIRST AMENDED

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

MONDAY, MAY 4, 2009—1:30 P.M.

(1) *People v. Traylor (Dale)*, S157820

#08-25 *People v. Traylor (Dale)*, S157820. (C053172; 156 Cal.App.4th 339; Superior Court of Nevada County; M05-0569.) Petition for review after the Court of Appeal affirmed an order dismissing a criminal complaint. This case presents the following issue: Can a misdemeanor complaint charging a lesser included offense be filed if a felony complaint charging the greater crime was dismissed after a preliminary hearing?

(2) *People v. Bramit (Michael Lamar)*, S064415 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

(3) *People v. Burney (Shaun)*, S042323 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

TUESDAY, MAY 5, 2009—9:00 A.M.

(4) *San Leandro Teachers Assn. et al. v. Governing Board of the San Leandro School District et al.*, S156961

#07-446 *San Leandro Teachers Assn. et al. v. Governing Board of the San Leandro School District et al.*, S156961. (A114679; 154 Cal.App.4th 866; Superior Court of Alameda County; RG05235795.) Petition for review after the Court of Appeal reversed

the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Does Education Code section 7054 permit a school district to prohibit the teachers union from using the school's mailboxes to distribute a union newsletter to its members, if the newsletter includes endorsements for school board candidates? (2) Does the guarantee of liberty of speech in California Constitution, article I, section 2, assure that an employee organization may distribute its message to its members concerning electoral politics via school mailboxes?

(5) *Azure Limited v. I-Flow Corp.*, S164884 (Kennard, J., not participating; Perren, J., assigned justice pro tempore)

#08-138 Azure Limited v. I-Flow Corp., S164884. (G038167; 163 Cal.App.4th 303; Superior Court of Orange County; 06CC07434.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Is the statutory immunity accorded a corporation that transfers escheated shares of stock to the state (Code Civ. Proc., § 1532, subd. (d)) absolute or conditional?

(6) *People v. McNeal (Timmie Lance)*, S157565

#08-03 People v. McNeal (Timmie Lance), S157565. (E041226; 155 Cal.App.4th 582; Superior Court of San Bernardino County; CRA4177.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issues: (1) Should evidence of the range and variability between individuals of the "partition ratio," which defines the percentage of alcohol in a breath sample that corresponds to a given level of alcohol in the blood, be admissible in a prosecution for driving under the influence in violation of Vehicle Code section 23152, subdivision (a)? (2) Should evidence of a defendant's personal partition ratio be admissible in such a case?

1:30 P.M.

(7) *In re Martinez (Omar Fuentes) on Habeas Corpus*, S141480

#07-34 In re Martinez (Omar Fuentes) on Habeas Corpus, S141480. Original

proceeding. In this case, which is related to the automatic appeal in *People v. Martinez* (2003) 31 Cal.4th 673, the court issued an order to show cause on petitioner's claims for relief under article 36 of the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77.

(8) *People v. Butler (Raymond)*, S055501 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

(9) *People v. Friend (Jack Wayne)*, S027264 [Automatic Appeal]

This matter is an automatic appeal from a judgment of death.

WEDNESDAY, MAY 6, 2009—9:00 A.M.

(10) *Munson v. Del Taco, Inc.*, S162818

#08-103 Munson v. Del Taco, Inc., S162818. (9th Cir. No. 06-56208; 522 F.3d 997; Central District of California; CV 05-5942 AHM.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The questions presented, as restated by this court, are: “(1) Must a plaintiff who seeks damages under California Civil Code section 52, claiming the denial of full and equal treatment on the basis of disability in violation of the Unruh Civil Rights Act (Civ. Code, § 51) and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), prove ‘intentional discrimination’? (2) If the answer to Question 1 is ‘yes,’ what does ‘intentional discrimination’ mean in this context?”

(11) *People v. Anderson (Barry)*, S152695

#07-280 People v. Anderson (Barry), S152695. (C047502, C048283; 149 Cal.App.4th 183; Superior Court of Sacramento County; 03F00398.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. The court limited review to the following issue: Do double jeopardy principles preclude

retrial of a sentencing allegation under the one strike law (Pen. Code, § 667.61) if the jury convicts the defendant of a qualifying offense but is unable to reach a verdict on the related sentencing allegation? (See also *Porter v. Superior Court of Monterey County*, S152273 [#07-281].)

(12) *Porter v. Superior Court of Monterey County (People, Real Party in Interest)*, S152273

#07-281 *Porter v. Superior Court of Monterey County (People, Real Party in Interest)*, S152273. (H029884; 148 Cal.App.4th 889; Superior Court of Monterey County; SS042332A.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Do double jeopardy principles preclude retrial of the allegation that an attempted murder was willful, deliberate, and premeditated (Pen. Code, § 664, subd. (a)) or retrial of an enhancement for allegedly committing the crime for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)) if the trial court granted a motion for a new trial on those allegations because the jury's verdicts were "contrary to . . . [the] evidence" within the meaning of Penal Code section 1181, subdivision 6? (See also *People v. Anderson (Barry)*, S152695 [#07-280].)

1:30 P.M.

(13) *People v. Dieck (Roland)*, S158076

#08-01 *People v. Dieck (Roland)*, S158076. (C052606; nonpublished opinion; Superior Court of Trinity County; 05F169.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Was defendant entitled to seven days of presentence credits for the five days he spent in jail prior to sentencing (see Pen. Code, § 4019, subd. (f) ["a term of six days will be deemed to have been served for every four days spent in actual custody"]) or only five days (see Pen. Code, § 4019, subd. (e) ["No deduction may be made under this section unless the person is committed for a period of six days or longer"])?

(14) ***People v. Lewis (Michael), S069959 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

(15) ***People v. Rogers (Ramon Jay), S064337 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.